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No. 99-625

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

MARY JEWELL,

Petitioner,

v.

DALLAS INDEPENDENT SCHOOL DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

DONALD W. HILL
LINDA G. SORRELLS
THE LAW OFFICES OF
DONALD W. HILL
400 South Zang Boulevard
Suite 600
Dallas, Texas 75208
(214) 941-6814

CRAIG A. CAPUA
Counsel of Record
ROYCE B. WEST
ROBINSON WEST & GOODEN, P.C.
400 South Zang Boulevard
Suite 600
Dallas, Texas 75208
(214) 941-1881

Attorneys for Respondent

156133

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

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RELEVANT RESPONDENT DECISIONS

February 24, 1995, decision pertaining to Petitioner's agreement to suspension of employment without pay prior to the pre-termination hearing is reproduced in the App. at 1a.

May 31, 1996, decision pertaining to Respondent's Administrative Hearing Panel sustaining Respondent's recommendation to terminate Petitioner's employment for cause is reproduced in the App. at 4a.

RELEVANT RESPONDENT BOARD POLICIES AND PROCEDURES

Respondent Board Policy DOAC (Local) and DOAC is reproduced in the App. at 8a.

Excerpt of Respondent Board Policy DGBA (Local) is reproduced in the App. at 14a, which includes the finality of the termination decision of Respondent's Administrative Hearing Panel in absence of a timely appeal by Petitioner, and is reproduced in the App. at 15a.

STATEMENT OF THE CASE

Petitioner was employed by the Dallas Independent School District ("Respondent") as a Special Education Teacher under a term contract, as defined by § 21.201(3), TEX. EDUC. CODE ANN. (Vernon 1972 and Supp. 1996) (the "Code"). Petitioner was assigned to W. H. Adamson High School, Dallas, Texas. After numerous observations and assistance sessions, Petitioner's appraisal record for the 1993/1994 school year was completed on May

4, 1994. The overall rating was "Unsatisfactory" because of Petitioner's ineffective teaching methods. Petitioner initiated a Level I grievance under Respondent Board Policy DGBA (Local), to complain about the 1993/1994 "Unsatisfactory" appraisal evaluation. The grievance was denied on June 13, 1994. Petitioner timely filed a Level II grievance complaining about her 1993/1994 appraisal evaluation. The grievance was again denied in a decision issued on August 25, 1994. Petitioner failed to timely appeal the Level II decision pursuant to DGBA (Local); consequently, her request for a Level III hearing was initially denied.

On September 16, 1994, Petitioner received her first observation for the 1994/1995 school year. Petitioner's first appraisal record for the 1994/1995 school year was completed on September 22, 1994, and the overall rating was "Unsatisfactory." She was also observed on other occasions and no significant improvement was noted. On December 8, 1994, Petitioner was notified, in writing, of the recommendation to terminate her teaching contract for good cause and of her right to request a hearing. The written notice described Petitioner's teaching deficiencies and explained the factual basis for good cause. Petitioner timely requested a hearing on December 12, 1994. The hearing was initially scheduled for January 1995; however, it was rescheduled for February 10, 1995, pursuant to the request of Petitioner's attorney. On December 12, 1994, Petitioner also filed a Petition for Review (the "Petition") with the Texas Commissioner of Education (the "Commissioner") (State Commissioner of Education Docket No. 099-R10-1194), complaining of the 1993/1994 and 1994/1995 evaluations, the denial of a 1994/1995 pay increase and the recommendation to terminate her contract. The hearing on the Petition was scheduled for June 14, 1995.

On February 10, 1995, a hearing was convened to hear the recommendation to terminate Petitioner's employment. The hearing was convened before Respondent's Administrative Hearing Panel. Petitioner appeared at the hearing with her attorney. Prior to the hearing, Petitioner and her counsel had been advised, in writing, of the witnesses to be called on behalf of Respondent, the proposed exhibits and the specific nature of the charges against her. Petitioner requested a continuance of the hearing because she was not ready to proceed and she wanted to give the Commissioner sufficient time to review her Petition. Respondent did not oppose the continuance; however, Respondent requested that Petitioner be placed on leave without pay. At all times prior to February 10, 1995, Petitioner had been paid her full salary. Petitioner did not oppose Respondent's request for leave without pay. On February 24, 1995, an order was issued granting Petitioner's continuance and Respondent's recommendation to suspend Petitioner's employment without pay. App. at 3a. On June 14, 1995, which was the day of the hearing before the Commissioner, Petitioner announced her desire to pursue local remedies against Respondent and made an oral motion to dismiss her appeal. A dismissal order was issued by the Commissioner on the same day.

After the dismissal of the appeal before the Commissioner, Respondent scheduled a Level III hearing on Petitioner's grievance concerning her 1993/1994 and 1994/1995 evaluations and the corresponding "Unsatisfactory" appraisal ratings. The hearing was held on September 11, 1995, before a Hearing Officer. Petitioner was represented by counsel at the hearing. Further, all parties were allowed to present evidence and cross-examine witnesses. Petitioner was also afforded the opportunity to

testify. The Hearing Officer's Level III decision was issued on September 29, 1995. The Hearing Officer recommended that corrections and recalculations be made to Petitioner's appraisal records, but that the "Unsatisfactory" ratings remain the same. Pursuant to Respondent's Board Policy, Petitioner appealed this recommendation to Respondent's Board of Trustees.

On February 29, 1996, and March 28, 1996, a hearing was held concerning the recommendation to terminate Petitioner's employment contract for good cause. The hearing was held before Respondent's Administrative Hearing Panel composed of impartial teachers, administrators and other employees. Petitioner was represented by counsel at the hearing. In accordance with Respondent's Board policy, prior to the hearing, counsel for Respondent provided Petitioner's attorney with Respondent's witness list and copies of all evidence to be presented during the hearing. App. at 12a. Further, all parties were allowed to present evidence and cross-examine witnesses. App. at 13a. Petitioner was also afforded the opportunity to testify. App. at 13a.

On May 31, 1996, Respondent's Administrative Hearing Panel issued its decision sustaining Respondent's recommendation to terminate Petitioner's employment. App. at 7a. Petitioner was given notice of the right to appeal the May 31, 1996 decision and to receive a post-termination hearing. Pursuant to Respondent's Board Policy, if Petitioner disagreed with the Administrative Hearing Panel's decision, all she had to do was timely appeal the decision and request a hearing; otherwise, the decision would become final. App. at 15a. Petitioner did not appeal the Administrative Hearing Panel's decision to the Board of Trustees of Respondent. Accordingly, the decision to terminate Petitioner's

employment contract for good cause became final on June 10, 1996. App. at 15a. Further, Petitioner did not appeal the termination decision to the Commissioner.

On April 11, 1996, immediately prior to the previously mentioned decision to terminate Petitioner's employment contract by the Administrative Hearing Panel, Petitioner received a Level IV hearing before Respondent's Board of Trustees concerning the 1993/1994 and 1994/1995 evaluations and the corresponding "Unsatisfactory" appraisal ratings. After considering all of the evidence, the Board of Trustees voted to change Petitioner's evaluations from "Unsatisfactory" to "Below Expectations." The Board of Trustees' decision was issued on April 25, 1996. On May 9, 1996, Petitioner filed her second Petition for Review with the Commissioner (State Commissioner of Education Docket No. 117-R2-596), ostensibly to appeal the Board of Trustees' decision regarding the appraisal ratings.

On November 6, 1996, Petitioner filed a Motion to Withdraw the second Petition filed with the Commissioner. A dismissal order was issued on November 7, 1996. Petitioner filed this lawsuit on December 5, 1996, in the United States District Court for the Northern District of Texas-Dallas Division. Petitioner alleged the following claims for relief in the lawsuit: (1) due process violations (as it relates to her grievance and termination) and 42 U.S.C. § 1983; (2) denial of a salary increase for the 1994/1995 school year; (3) breach of contract; (4) invasion of privacy; (5) equal protection violation; and (6) a first amendment violation.

A jury trial was held from September 28, 1998 through October 1, 1998. At the conclusion of Petitioner's case in

chief, Respondent moved for a directed verdict on all claims pursuant to Rule 50(a) of the Federal Rules of Civil Procedure. The District Court granted Respondent's Motion on all of Petitioner's federal claims and dismissed those claims. The District Court denied the Motion as to the breach of contract claim. The jury entered a verdict for Respondent on Petitioner's breach of contract claim, and the District Court entered judgment in favor of Respondent. Petitioner moved for a new trial or to amend the judgment; however, the motion was denied. Petitioner appealed to the Fifth Circuit Court of Appeals on October 26, 1998. The Fifth Circuit Court affirmed the District Court's decision, concluding that no reasonable jury could have found in favor of Petitioner on her federal claims and breach of contract claim.

REASONS FOR DENYING THE WRIT

I.

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS ENTERED A DECISION THAT IS ENTIRELY CONSISTENT WITH PREVAILING SUPREME COURT AUTHORITY.

This Court should summarily deny the Writ because the decision of the Fifth Circuit Court of Appeals is consistent with this Court's decision in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985).

A. Petitioner was afforded her pre-termination and post-termination due process rights.

The pivotal considerations in examining the sufficiency of the procedural due process afforded to a party are twofold:

(1) an opportunity to be heard at a meaningful time and in a meaningful manner; and (2) a limited, yet sufficient opportunity to be heard prior to any deprivation of a property or liberty interest. *Loudermill*, 470 U.S. at 532; *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). The sufficiency of the procedural due process protections to be afforded a party are *not* determined by statute, rule or regulations, though such statutory or regulatory provisions may be considered. *FDIC v. Mallen*, 486 U.S. 230 (1988); *Brock v. Roadway Express, Inc.*, 481 U.S. 252 (1987). Due process is a flexible, useful and practical concept which adjusts as the particular circumstances dictate. *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972).

With these guiding principles in mind, the position of Respondent is clear: Petitioner was afforded her pre-termination and post-termination due process rights. App. at 12a and 15a. She received numerous meaningful opportunities to be heard, after written notice, which included the specific charges of teacher incompetence against her. These opportunities were provided to her as well as representation by legal counsel prior to Respondent depriving her of financial benefits for which this Court has identified as an important constitutional interest. Moreover, Respondent's Board of Trustees afforded Petitioner every opportunity to protect that interest and avoid any erroneous, pre-deprivation mistake.

Further, Petitioner was afforded a full evidentiary hearing at a meaningful time and in a meaningful manner. Petitioner does not assert any unconstitutional delay in affording her a full post deprivation evidentiary hearing with an opportunity to present witnesses, to conduct cross-examination of Respondent's witnesses and offer

documentary evidence. More important, a balancing of the interests of the parties clearly weighs in favor of Respondent. Petitioner's private interest was adequately protected by continuing the flow of financial benefits to Petitioner until she had been afforded a meaningful opportunity to respond to the charges against her. In recognition of the risks of an erroneous deprivation, Respondent implemented a regulatory scheme which allows several "checkpoints" which include decision-making involvement of third parties and other impartial Respondent employees, teachers and/or administrators. App. at 1a and 4a. Any additional procedural safeguards would be cumulative of the existing procedures in effect.

Finally, Respondent has a strong interest in achieving finality in these personnel matters. The time, energy and emotional involvement of Respondent's personnel are considerable. Therefore, Respondent's desire to bring an end to the painful process of terminating incompetent teachers is strong. Once a teacher waives or ends her appeal process, the matter is resolved based only on the actions of the alleged injured party. App. at 15a. Finality is achieved and no further action is needed or required by the Board of Trustees whose volunteer time is very precious. Performing useless acts in the face of a voluntary end of the appeal process is contrary to good government and is not required by our Constitution.

B. Petitioner's right to be heard by Respondent's Board of Trustees is not constitutionally required unless specifically requested by the aggrieved party.

This Court has rejected any specific requirements for a post-termination due process hearing. The rationale for this refusal to apply any more than the general principles

articulated in the cases cited herein is clear: the circumstances in which these disputes arise come in infinite varieties and are drawn from a myriad of administrative, regulatory and statutory sources. Petitioner's contention that due process *requires* a hearing, findings, notice and all of these protections attendant to an administrative process is not supported by prevailing Supreme Court authority. This Court has stated specifically that there is no requirement that oral testimony be heard in every administrative proceeding. *FDIC*, 486 U.S. at 248. Likewise, there is no legal authority for the proposition that due process protections such as those asserted by Petitioner can not be waived by Petitioner.

CONCLUSION

Respondent afforded Petitioner her due process rights, including pre-termination and post-termination and/or post deprivation rights, at a meaningful time and in a meaningful manner. Petitioner waived additional appeal rights, pursuant to her contract and not by constitutional mandate, by failing to request a post-termination hearing. Finally, Petitioner failed to offer any legal authority in support of the proposition that any purported right to a termination hearing before Respondent's Board of Trustees cannot be waived.

Based upon the authorities cited and the arguments presented, Respondent requests that this Court affirm the judgment of the Fifth Circuit Court of Appeals and deny the Petition for a Writ of Certiorari.

Respectfully submitted,

DONALD W. HILL
LINDA G. SORRELLS
THE LAW OFFICES OF
DONALD W. HILL
400 South Zang Boulevard
Suite 600
Dallas, Texas 75208
(214) 941-6814

CRAIG A. CAPUA
Counsel of Record
ROYCE B. WEST
ROBINSON WEST & GOODEN, P.C.
400 South Zang Boulevard
Suite 600
Dallas, Texas 75208
(214) 941-1881

Attorneys for Respondent

APPENDIX

APPENDIX A — FEBRUARY 24, 1995, DECISION PERTAINING TO PETITIONER'S AGREEMENT TO SUSPENSION OF EMPLOYMENT WITHOUT PAY PRIOR TO THE PRE-TERMINATION HEARING

BEFORE A
DALLAS INDEPENDENT SCHOOL DISTRICT
ADMINISTRATIVE HEARING PANEL

NO. A3-011094-868-7

IN THE MATTER OF THE
POSTPONEMENT/PROPOSED SUSPENSION
WITHOUT PAY OF

MARY JEWEL

DECISION

Dallas Independent School District ("DISD") brings this personnel action against Ms. Mary Jewell attempting to suspend her employment without pay. On February 10, 1995, a hearing was held in the Personnel Center Hearing Room before a panel appointed by the General Superintendent. Ms. Jewell was represented by Attorney Susan Kerr. The Administration was represented by Mr. William Morgan.

FINDINGS OF FACT

After due consideration of the evidence and matters produced, we in our official capacity as hearing officers, make the following Findings of Fact:

1. Employee was present at the hearing.

Appendix A

2. Employee has been recommended for termination under DISD Policy DOAC(Local).

3. Employee's representative requested a postponement due to a pending TEA Pre-Conference Hearing regarding the employee's Petition for Review over her TTAS appraisal appeal.

CONCLUSION OF LAW

The Administration pointed out that the employee's pending Petition for Review concerns her TTAS Evaluation and, as such, was only one of the claims under which the Administration was recommending termination. The Administration recommended placing the employee on leave without pay should the postponement be granted.

JUDGMENT

After due consideration of the evidence presented, the matter officially noted and the governing law, and the foregoing Findings of Fact and Discussion, in our capacity as Hearing Officers, and in accordance with the authority granted to us by the General Superintendent, it is hereby **ORDERED** that the recommendation to suspend Mary Jewell without pay, be, and hereby is, SUSTAINED. It is hereby **ORDERED** that Ms. Mary Jewell be suspended without pay. At the conclusion of this termination hearing, if the employee is reinstated, she will be entitled to back pay.

Appendix A

SIGNED and ENTERED this 24th day of February, 1995.

s/ Willie Crowder
Willie Crowder, Panel Chairperson

s/ Carolyn Bailey
Carolyn Bailey, Panel Member

s/ Loie Harris
Loie Harris, Panel Member

APPENDIX B — MAY 31, 1996, DECISION PERTAINING TO RESPONDENT'S ADMINISTRATIVE HEARING PANEL SUSTAINING RESPONDENT'S RECOMMENDATION TO TERMINATE PETITIONER'S EMPLOYMENT FOR CAUSE

BEFORE A
DALLAS INDEPENDENT SCHOOL DISTRICT
ADMINISTRATIVE HEARING PANEL

No. A3-022995-1010-1

IN THE MATTER OF THE
PROPOSED TERMINATION OF

MARY JEWELL

DECISION

Dallas Independent School District ("DISD") brings this personnel action against Ms. Mary Jewell attempting to terminate her employment. On February 29, 1996, a hearing was held in the Personnel Center Hearing Room before a panel appointed by the General Superintendent. Ms. Jewell was represented by Mr. Kenneth Byford, Attorney. The Administration was represented by Mr. William Morgan.

FINDINGS OF FACT

After due consideration of the evidence and matters produced, we in our official capacity as hearing officers, make the following Findings of Fact:

1. Employee is a special education teacher at W.H. Adamson High School.

Appendix B

2. Employee argued that she was teaching outside her certification eligibility.

3. Intervention strategies, i.e. instructional support and assistance from campus administrators, instructional support assistance, and materials from the Special Education Department; Professional Growth Plans; observations and directives from the principal were attempted.

4. The employee was rated Unsatisfactory in 1993-94 and 1994-95 on the Texas Teacher Appraisal System.

5. A Level III Hearing Officer on September 29, 1995, concluded that errors were made with the two years' evaluations. The Hearing Officer ordered corrections and recalculation of the Appraisal Records.

6. The Hearing Officer concluded that the employee's belief that the evaluations were unfair was not proven and that the mathematical error did not "tip the scale to such a degree to find the employee innocent of ineffective teaching."

7. The Principal's recalculation of the 1993-94 and Appraisal Records did not change the overall Unsatisfactory rating.

8. On April 11, 1996, the Board of Education ordered the employee's evaluation changed from Unsatisfactory to Below Satisfactory.

Appendix B

9. DISD Certification Specialist, Sharon Warren, in a notarized statement verified that Mary Jewell was certified to teach the subjects to which she was assigned.

DISCUSSION

The overriding questions this Council considered were whether or not the Principal of Adamson High School identified for Mary Jewell what deficiencies existed, what areas to improve, offered her assistance to improve, and allowed sufficient time for that improvement. The panel feels that substantial evidence existed that the employee's performance in the classroom showed significant deficiencies in a number of areas and was, therefore, inadequate. The Principal and numerous other witnesses detailed multiple classroom observations, suggestions, and recommendations for the employee to improve. The employee was placed on Professional Growth Plans during the last two school years. These remedies produced no noticeable improvement in the employee's teaching effectiveness.

The Judicial Council considered the implications of the Board's April 11, 1996, change to Ms. Jewell's TTAS rating. However, the Council did not feel that changing the evaluation rating from *Unsatisfactory* to *Below Expectations* made a significant enough difference or impact on the evidence and testimony to warrant rejection of the recommendation for termination.

Appendix B

JUDGMENT

After due consideration of the evidence presented, the matter officially noted and the governing law, and the foregoing Findings of Fact and Discussion, in our capacity as Hearing Officers, and in accordance with the authority granted to us by the General Superintendent, the Judicial Council hereby **SUSTAINS** the administration's recommendation to terminate this employee. It is therefore, **ORDERED** that Mary Jewell's employment be **TERMINATED**.

Signed and Entered this 31st day of May, 1996.

s/ Willie Crowder
Willie Crowder, Panel Chairperson

s/ Carolyn Bailey
Carolyn Bailey, Panel Member

s/ Loie Harris
Loie Harris, Panel Member

APPENDIX C — RESPONDENT BOARD POLICY DOAC (LOCAL) & DOAC

Dallas ISD
057905

TERM CONTRACTS — DOAC
SUSPENSION/TERMINATION — (LOCAL)
DURING CONTRACT

SUSPENSION WITH PAY

A term contract employee may be suspended with pay or placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District's best interest will be served by the suspension or administrative leave.

SUSPENSION WITHOUT PAY

A term contract employee may, for good cause, be suspended without pay for a definite period of time set by the Board, provided that the employee has been given written notice of the allegations constituting good cause for the suspension and, before the suspension is imposed, has been afforded an opportunity for a hearing that complies with the time lines and procedural requirements set out in DOAC, preceding.

TERMINATION

The District may, for cause, discharge any employee and terminate any contract of employment at any time during the term thereof provided such cause is based upon the involvement of the employee in any one or more of the following:

Appendix C

1. Failure or refusal to comply with policies, orders, and directives of the Board or the General Superintendent and assistants.

2. Any act or conduct while at school, whether in or out of a classroom, that is either indecent, obscene, cruel, abusive, or is otherwise contrary to and inconsistent with the ordinary standards set by the performance and conduct of the other professional public school employees of the District.

3. Failure of the employee to use his or her best efforts in carrying out any one or more of the following areas of professional duties and responsibilities:

   a. Creating a climate for learning in the classroom, focusing upon teaching students "how to learn."

   b. Instilling a desire for learning in each student.

   c. Cooperating with coordinators, directors, instructional specialists, resource teachers, and departmental chairpersons.

   d. Improving teaching techniques.

   e. Maintaining all records and making all reports required by the principal or department head.

   f. Cooperating with guidance and psychological services in identifying and diagnosing problems of individual students.

Appendix C

g. Striving consistently to improve teaching performance through participating in staff developmental programs.

h. Serving on special study committees when so assigned.

Any necessary reduction of school personnel shall also be deemed as cause for dismissal of an employee, and a termination of contract may be issued.

"GOOD CAUSE"
FOR DISCHARGE

The following statements are further clarifications regarding dismissal at any time during the school year for just cause. Any employee, whether employed under a one-year contract or a multi-year contract, may be discharged during any school year, upon notice and hearing as herein provided, for one or more of the following reasons which shall constitute lawful cause for discharge:

1. Immorality.

2. Conviction at the trial-court level of any felony or any other crime involving moral turpitude.

3. Consumption of alcoholic beverages in any amount while on duty.

4. Excessive use of alcoholic beverages at any time that in any way affects the ability to perform duties as determined by Board policy.

Appendix C

5. Expressed unwillingness, refusal, and failure to comply with official directives and established Board policy.

6. Physical or mental incapacity preventing performance of the contract of employment.

7. Illegal use or abuse of drugs or hallucinogens.

8. Physical or verbal abuse of students, parents, or co-workers.

9. Inefficiency or incompetency in the performance of duties as determined by the performance standards established by the Board.

10. Good cause as determined by the Board — good cause being the failure of the employee to meet the acceptable standards of conduct as determined by the Board pursuant to Board policy, or where the retention of the employee is detrimental to the best interest of the students of the District.

11. Failure to comply with such reasonable requirements as the Board may prescribe for achieving professional improvement growth.

12. Willful failure to pay debts.

13. Necessary reduction of personnel.

Appendix C

The salary of an employee shall continue for ten days, unless an appeal is submitted and recorded, and under such circumstances, pay shall continue until the review council renders a decision.

GROUNDS FOR DISMISSAL — DOAC

Any term contract employee may be dismissed for good cause before the completion of the term fixed in the contract.

NOTICE

Before any term contract employee is dismissed for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of the District's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist.

HEARING

If, upon written notification, the employee desires to be heard and to contest the proposed action of the Board, the employee shall give the Board written notice within 15 days of receiving the written notification. The hearing shall be set on a date that affords the employee reasonable time to prepare an adequate defense.

Cleveland Bd. of Educ. v. Loudermill, 105 S.Ct. 1487 (1985); Bexar Cty. Sheriff's Civ. Serv. v. Davis, 802 S.W.2d 659 (Tex. 1990); Wells v. Dallas ISD, 793 F.2d 679 (5th Cir. 1986)

Appendix C

The Board may conduct the hearing in open session or in closed session unless the employee requests a public hearing, in which case the hearing shall be open to the public. *Art. 6252-17, Sec. 2(g), V.A.T.S.*

At the hearing before the Board, the employee may employ counsel. The employee also has the right to hear the evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence of innocence or extenuating circumstances. Prior to dismissal, the Board shall determine the existence of good cause for termination. Such determination shall be based solely on the evidence presented in the hearing. *Ferguson v. Thomas 430 F.2d 852 (5th Cir 1970)*

SUSPENSION

The employee may be suspended with pay pending the outcome of the dismissal hearing. *Moore v. Knowles, 466 F.2d 531 (1972)*

NOTICE TO THE COMMISSIONER

See policy DO regarding circumstances in which a certified employee's dismissal will be reported to the commissioner of education.

APPENDIX D — EXCERPT OF RESPONDENT BOARD POLICY DGBA (LOCAL)

DALLAS ISD
057905

PERSONNEL-MANAGEMENT RELATIONS DGBA
EMPLOYEE COMPLAINTS (LOCAL)

HEARINGS-JUDICIAL COUNCIL

A tape recording will be made of all panel hearings by the District and shall be made available to the employee upon request. A court reporter may be present, at the cost of the party requesting same.

The chairperson shall rule on all objections to the evidence; however, as the hearing is administrative, the hearing officer is not bound by the rules of evidence and may, within the bounds of fairness, hear any evidence that he or she feels is relevant. To the extent that the rules of evidence are applied, the Texas Rules of Evidence shall govern.

The party having the burden of proof shall have the right to make opening and closing remarks, present evidence initially, examine and cross-examine witnesses and object to testimony or other error. All parties shall have the right to examine and cross-examine all witnesses, introduce evidence, make statements, and object to testimony or other error.

After hearing the evidence presented and considering the testimony, the hearing panel shall prepare a proposed written decision for issuance that sustains the

recommendation of the administration, overrules the recommendation of the administration, modifies the recommendation of the administration, or takes whatever action it deems warranted under the facts found to exist. The decision shall contain an opinion explaining the result reached, setting forth all necessary findings of fact and conclusions of law and policy, and, if appropriate, a judgment and/or necessary orders.

A panel's hearing decision, unless overruled by the Superintendent or the Board, or reversed on appeal to the Board, shall be binding precedent. All personnel ordered to take an action in a judgment or order of a panel shall comply with such judgment and/or order and any failure to do so shall be considered insubordination.

The opinion of the panel shall be delivered to the employee and/or representative by hand or by certified mail, return receipt requested. The employee and/or representative shall also be notified of his or her appeal rights.

If the decision of the Judicial Council does not satisfy the employee and is otherwise appealable, the employee may appeal the decision to the Board by filing a written Notice of Appeal with the Board Secretary within ten days of the date upon which the decision was delivered to such employee. Upon receipt of a request to appeal, the office of the Board Secretary shall forward the necessary rules and procedures for appeal.